NO. 86-240

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1986

TERRY MAY,

Petitioner

versus

TRANSWORLD DRILLING COMPANY,
LITTON SYSTEMS, INC.,
KEYES OFFSHORE, INC., AND
HUTHNANCE DRILLING COMPANY,

Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

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Huthnance Drilling Company

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STATUTORY PROVISIONS

In addition to the statutes cited in the appendix to the petition, 33 USC 905(a) provides:

> " The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of

kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensations required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under the chapter, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee. For purposes of this subsection, a contractor shall be deemed the employer of a subcontractor's employees only if the subcontractor fails to secure the payment of compensation as required by section 904 of this title."

STATEMENT OF THE CASE

As noted by the United States District Court in Appendix A, pages A-2 and A-5, to the petition, a stipulation of facts was entered into by the parties. The stipulation is made a part of this response as Appendix A.

The stipulation admits that the petitioner was injured while working in a land storage area or platen within the shipyard where pieces of fabricated steel were temporarily stored for future ship construction. (Stipulation paragraphs 8 through 16, inclusive)

No identifiable vessel was in existence or had been launched in navigable waters at the time of petitioner's injury, nor could the piece of steel be identified as a component of a vessel under construction. None of the alleged vessel owners had vicarious responsibility for the alleged negligence of the plaintiff's co-workers. (Stipulation paragraph 18)

ARGUMENT

THE PETITION DOES NOT SET OUT A REASON FOR GRANTING THE WRIT.

The petitioner does not contend that the decision of the Fifth Circuit Court of Appeals sought to be reviewed is in conflict with any decision rendered by any other Circuit. (Supreme Court Rule 17(a))

The petition does not set out any decision of this Court "in conflict with the applicable decisions of this Court." (Supreme Court Rule 17(c))

Prior to the 1972 amendments to the Longshoremen and Harbor Workers Compensation Act (LHWCA) an action could not be maintained by a shipbuilder employee of a shipbuilder employer for injuries sustained in the performance of his duties within the shipyard when covered by the applicable compensation provisions of the LHWCA. Likewise, an owner contracting for the construction of a ship could not be vicariously held liable for the negligence of its contractor.

After the adoption of the 1972 amendments to the LHWCA a number of the Circuit Courts of Appeal, including the Fifth Circuit, held that a shipyard construction worker could maintain an action against his shipbuilder employer, notwithstanding coverage under the LHWCA where a vessel

had been launched and the injury occurred aboard the launched vessel. **Hall v. Hvide Hull No. 3, 746 F.2d 294 (5th Cir. 1984)**

As noted by the Fifth Circuit Court of Appeals in the instant case, 33 USC 905(b) "was amended and the following provision was substituted * * * * :

> "If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer.

"The 1984 amendment to Section 905(b) is applicable only to injuries occurring after September 28, 1984 and hence does not itself preclude May's claim against Litton, his employer, as the vessel owner. LHWCA Amendments of 1984, Pub. No. 98-426, Section 5(b), 98 Stat. 1639, 1641." (Page A-19 of Petition)

No court, either prior or subsequent to the 1972 amendments to the LHWCA, has held that an injury to a shipyard worker, occuring on land while the worker is in the performance of his duties as a shipyard construction worker, comes within the purview of 33 USC 905(b). On the contrary, this Court held in **Edmonds v. Compagnie Generale Transatlantique**, 443 U.S. 2753 (1979) that:

> " Admiralty law is judge-made law to a great extent, **United States v. Reliable Transfer Co.**, 421 U.S. 397, 409, 95 S.Ct. 1708, 1714, 44 L.Ed.2d 251 (1975); **Fitzgerald v. United States Lines Co.**, 374 U.S. 16, 20, 83 S.Ct. 1646, 1650, 10 L.Ed.2d 720 (1963), and a longshoreman's maritime tort action against a shipowner was recognized long before the 1972 amendments, see **Pope & Talbot, Inc. v. Hawn**, 346 U.S. 406, 413-414, 74 S.Ct. 202, 207, 98 L.Ed 143 (1953), as it has been since." (443 U.S. 2756)

The legislative history of the adoption of the 1972 amendments to the LHWCA does not disclose any intent by the Congress of changing the existing maritime tort action recognized in **Edmonds v. Compagnie Generale Transatlantique**, supra. On the contrary, the 1972 amendments extended to shipbuilding employees the same third party rights that longshoremen have had for the injuries sustained aboard a vessel, except for the abolition of the doctrine of unseaworthiness.

> " The purpose of the amendments is to place an employee injured aboard a vessel in the same position he would be if he were injured in non-maritime employment ashore, insofar as bringing a third party damage action is concerned, and not to endow him with any special maritime theory of liability or cause of action under whatever judicial nomenclature it may be called, such as 'unseaworthiness', 'non-delegable duty', or the like." (United States Code, Congressional and Administrative News, 92nd Congress - - Second Session 1972, Volume 3 Page 4703)

The facts as stipulated by the parties in the court below, as found by the district court, and as stated by the Fifth Circuit Court of Appeals, do not bear any resemblance to the statement of facts set out in the petition. There was no identifiable vessel in existence at the time of petitioner's injuries, none had been launched into navigable waters, and the injury to the petitioner did not take place on any "vessel."

The petitioner urged the courts below to hold that any injury taking place within a shipyard confers a third party right of action on a shipbuilder employee against his shipbuilder employer under the provisions of 33 USC 905(b).

Since everyone within the shipyard is directly or indirectly engaged in the building of "vessels," such a construction would authorize every employee covered by the LHWCA, in addition to receiving the liberalized compensation now afforded by the Act, to bring a third party tort action against his employer under the theory that his employer was the "owner or operator of a vessel."

There is no intimation in any decision of this Court that it would judicially enlarge the provisions of 33 USC 905(b) beyond the express language of the statute. This is what the courts below declined to do.

CONCLUSION

We respectfully submit that the petition for certiorari should be denied.

Respectfully submitted,

TRANSWORLD DRILLING COMPANY,
LITTON SYSTEMS, INC.,
KEYES OFFSHORE, INC., and
HUTHNANCE DRILLING COMPANY,
Respondents

By: Karl Wiesenburg pmce

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CERTIFICATE

I, Karl Wiesenburg, do hereby certify that on or before the 8th day of September 1986 I mailed, postage prepaid, forty (40) copies of the Brief of Respondent in Opposition to the petition for certiorari to the United States Court of Appeals for the Fifth Circuit, to the Clerk of the Supreme Court of the United States, One First Street N.E., Washington D.C. 20543, and mailed three (3) copies of the brief, postage prepaid, to Messrs. Lampton O. Williams, E. Bragg Williams, III, and L. O'Neal Williams, Jr., of the firm Williams, Williams & Montgomery, P.A., Post Office Box 113, Poplarville, MS 39470, Attorney for the Petitioner.

Karl Wiesenburg, pro

Karl Wiesenburg

APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

TERRY MAY

PLAINTIFF

VERSUS

TRANSWORLD DRILLING COMPANY,
LITTON SYSTEMS, INC.,
AMERICAN MUTUAL LIABILITY INSURANCE COMPANY,
KEYES OFFSHORE, INC.,
and HUTHNANCE DRILLING COMPANY

DEFENDANTS

CIVIL ACTION NO. S82-0307(N)

STIPULATION OF COUNSEL

1. The plaintiff Terry May (May) is an adult resident citizen of Washington Parish, Louisiana.

2. The defendant Litton Systems, Inc. (Litton) is a Delaware corporation with its principal office in a state other than Mississippi which owns and operates a shipyard in Pascagoula, Jackson County, Mississippi.

3. The defendant Transworld Drilling Company (Transworld) is a Delaware corporation with its principal office in a state other than Mississippi.

4. The defendant Keyes Offshore, Inc. (Keyes) is a Texas corporation with its principal office in a state other than Mississippi.

5. The defendant Huthnance Drilling Company (Huthnance) is a Texas corporation with its principal office in a state other than Mississippi.

6. The matter in controversy exceeds, exlusive of interest and costs, the sum of $10,000.00 and jurisdiction is founded on diversity of citizenship and the amount involved under 28 U.S.C. 1332.

7. True copies of each of the contracts between Transworld, Keyes, Huthnance and Litton for the construction of the oil rig vessels are attached hereto as Exhibit "A-1" – "A-8" and are made a part of this Stipulation and are before this Court for all purposes set out in the agreed order of bifurcation.

8. On Saturday, February 14, 1981, the personnel employed in the construction of each of the above listed vessels were Litton supervisors and Litton employees performing duties under the construction contracts.

9. Transworld, Keyes and Huthnance each had company representatives stationed at Litton for the purpose of carrying out their companies' duties, responsibilities and functions under the terms of their contracts with Litton. None of the representatives were present on the night shift at the time May was injured.

10. Litton maintains a safety department for the purpose of making safety inspections within the shipyard. A true copy of Ingalls' (Litton) Manual of Safety Regulations is attached and made a part of this stipulation as Exhibit "B" hereto.

11. May was employed by Litton as a rigger to help construct vessels under construction, including those for

Transworld, Keyes and Huthnance. On Saturday, February 14, 1981, May and other Litton employees were working overtime because of productions schedules. As a part of his duties with Litton, May was instructed by his employer to work with a crane to move certain large pieces of fabricated steel.

12. May was injured while working on land within the shipyard in a work area where fabricated steel for the vessels being constructed for Transworld, Keyes, and Huthnance, and other vessels, was being stored.

13. On Saturday, February 14, 1981, between 9:00 p.m. and 10:00 p.m., while in the performance of his duties, a piece of fabricated steel for one of the vessels under construction, fell on May, crushing both of his legs which resulted in the amputation of his right leg below the knee and a compound fracture of the middle third left tibia and has caused May to become totally and permanently disabled.

14. The piece of fabricated steel which fell on May was a component of one of the vessels then under construction by Litton.

15. May does not know, and Litton cannot identify, which part of which vessel fell on May, seriously injuring him. Litton co-mingled the fabricated steel and its records do not disclose this information. Litton cannot determine from its records if, the piece of fabricated steel was paid for on February 14, 1981.

16. May, at the time of his injury, was a shipbuilder employee of Litton covered by the Longshoremen and Harbor Workers' Compensation Act (LHWCA). On February 14, 1981, Litton was a self-insurer.

17. Deposition taken by the parties shall be made a part of this stipulation and are before this Court for all purposes set out in the agreed order of bifurcation. Copies of the depositions shall be furnished by the parties to the Court.

18. Litton's company records show:

TRANSWORLD HULL 6101

(a)	Percentage of completion on 2/14/81:	72.1
(b)	Date work started:	3/24/80
(c)	Date integration began:	8/11/80
(d)	Percentage completion on date of integration:	11.2
(e)	Date rig was launched:	4/17/81
(f)	Percentage completion when launched:	84.4
(g)	Date Sea Trials began:	N/A
(h)	Percentage of completion on date Sea Trials began:	N/A
(i)	Date delivered:	7/8/81

TRANSWORLD HULL 6102

(a)	Percentage of completion on 2/14/81:	39.3
(b)	Date work started:	3/24/80
(c)	Date integration began:	12/1/80

(d) Percentage completion on date of integration: 23.9

(e) Date rig was launched: 9/24/81

(f) Percentage completion when launched: 91.1

(g) Date Sea Trials began: N/A

(h) Percentage of completion on date Sea Trials began: N/A

(i) Date delivered: 10/31/81

TRANSWORLD HULL 6301

(a) Percentage of completion on 2/14/81: 7.3

(b) Date work started; 9/29/80

(c) Date integration began: 4/10/81

(d) Percentage completion on date of integration: 16.6

(e) Date rig was launched: 3/6/82

(f) Percentage completion when launched: 89.9

(g) Date Sea Trials began: N/A

(h) Percentage of completion on date Sea Trials began: N/A

(i) Date delivered: 4/4/82

TRANSWORLD HULL 6302

(a)	Percentage of completion on 2/14/81:	2.5
(b)	Date work started:	9/29/80
(c)	Date integration began:	11/16/81
(d)	Percentage completion on date of integration:	23.6
(e)	Date rig was launched:	7/27/82
(f)	Percentage completion when launched:	90.5
(g)	Date Sea Trials began:	N/A
(h)	Percentage of completion on date Sea Trials began:	N/A
(i)	Date delivered:	8/20/82

KEYES HULL 6201

(a)	Percentage of completion on 2/14/81:	53.0
(b)	Date work started:	5/12/80
(c)	Date integration began:	7/16/80
(d)	Percentage completion on date of integration:	2.7
(e)	Date rig was launched:	3/28/81
(f)	Percentage completion when launched:	78.6

(g) Date Sea Trials began: 5/25/81

(h) Percentage of completion on date Sea Trials began: 98.3

(i) Date delivered: 6/18/81

KEYES HULL 6262

(a) Percentage of completion on 2/14/81: 33.6

(b) Date work started: 5/12/80

(c) Date integration began: 8/18/80

(d) Percentage completion on date of integration 1.2

(e) Date rig was launched: 6/27/81

(f) Percentage completion when launched: 86.3

(g) Date Sea Trials began: 8/19/81

(h) Percentage of completion on date Sea Trials began: 99.8

(i) Date delivered; 8/28/81

KEYES HULL 6203

(a) Percentage of completion on 2/14/81: 13.5

(b) Date work started: 8/18/80

(c) Date integration began: 10/6/80

(d) Percentage completion on date of integration: 4.8

(e) Date rig was launched: 10/29/81

(f) Percentage completion when launched: 92.6

(g) Date Sea Trials began: 12/7/81

(h) Percentage of completion on date Sea Trials began: 100

(i) Date delivered: 12/11/81

HUTHNANCE HULL 6031

(a) Percentage of completion on 2/14/81: 4.4

(b) Date work started: 8/19/80

(c) Date integration began: 12/8/80

(d) Percentage completion on date of integration: 1.2

(e) Date rig was launched: 11/30/81

(f) Percentage completion when launched: 86.7

(g) Date Sea Trials began: 1/24/82

(h) Percentage of completion on date Sea Trials began: 100

(i) Date delivered: 1/26/82

19. If the Court deems this Stipulation to be insufficent to determine the issues of law submitted by agreement of the

parties to the Court, the parties agree that the Court shall submit such additional issues of fact as it may deem necessary for adjudication to the jury at the trial on the merits.

Respectfully submitted,

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